

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

RICHARD LEWIS KATZIN, ESTATE OF ANNETTE KATZIN, ESTATE OF MARY
BETH KATZIN-SIMON, AND ROSEMARIE KJELDSSEN,

Petitioners,

v.

UNITED STATES,

Respondent.

APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION
FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

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Rosemarie Kjeldsen*

June 14, 2019

**APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION
FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FEDERAL CIRCUIT**

To the Honorable John J. Roberts, Jr., Chief Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Federal Circuit:

Pursuant to Supreme Court Rules 13.5, 21, 22 and 30, Petitioners Richard Lewis Katzin, the Estate of Mary Beth Katzin-Simon, the Estate of Annette Katzin and Rosemarie Kjeldsen respectfully request a sixty (60) days extension of time, up to and including August 23, 2019, to file a petition for a writ of certiorari to the United States Court of Appeals for the Federal Circuit to review that court's divided decision in *Katzin, et al, v. United States*, No. 16-2636 (Fed. Cir. 2018) (attached as Exhibit A) issued on November 19, 2018 with a dissenting opinion included with Exhibit A, and the order of denial of the petition for rehearing entered on March 26, 2019 (attached as Exhibit B). The petitioners intend to file a joint petition seeking review of this judgment under Supreme Court Rule 12.4. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1), and the time to file a petition for a writ of certiorari will expire without an extension on June 24, 2019. This application filed jointly by petitioners is timely because it has been filed at least ten days prior to the date on which the time for filing the petition is set to expire. *See* S. Ct. R. 30.2.

BACKGROUND

Petitioners own a 68.8-acre, unimproved parcel of land on the island of Culebra, Puerto Rico. The land is suitable for development for residential and other purposes and, in 2006 a group of investors contracted to purchase it for \$4 million. But before the sale closed, the investors contacted the U.S. Fish and Wildlife Service ("FWS") to ask

whether the United States held title to any of the land covered by the contract. In response, the FWS informed, through several different communications complete with maps and diagrams, that the Government claimed both a parcel known as the gun mount and the ten-acre peninsula of the petitioners' property. The investors informed the petitioners by letter that, due to the Government's claim of title, they would not complete the sale.

Several other purchasers were interested enough to travel to Culebra to inspect the property but, due to the Government's continued claim that it owned a portion of the property, though the exact location of the gun mount was uncertain, no offers were received. At last, the petitioners' real estate broker informed them that the land was unmarketable and quit. As of today, the Government still asserts its claim of title, and the petitioners cannot sell it. As the panel dissent states, "[t]he Court of Federal Claims found that the 'evidence of unsalability has not been contravened by the government.' My colleagues assign no error to that finding."¹

In June 2012, the petitioners' filed suit for the taking of their land and the \$4 million contract and, following a nine-day trial, the Court of Federal Claims ruled that the Government's actions had deprived them of the right to sell the 10.1-acre peninsula, which they owned, and that this was a Fifth Amendment taking.² The trial court awarded them \$610,962.97 in just compensation, equal to the value of the land taken.³

The Government appealed, claiming that the trial court had erred in finding that the petitioners, and not the Government, owned the 10.1 acres, and that the Government's actions did not constitute a taking of the petitioners' land. A divided panel reversed,

¹ *Katzin v. United States*, 908 F.3d 1350, 1368 (quoting *Katzin v. United States*, 127 Fed. Cl. 440, 482 (Fed. Cl. 2016) (internal citation omitted) (Newman, J., dissenting).

² *Katzin v. United States*, 127 Fed. Cl. 440, 482 (2016).

³ *Katzin v. United States*, 127 Fed. Cl. 440, 483 (2016).

holding that the Government's claim of title could not constitute a taking, even if it made the petitioners' land unmarketable and valueless.

This case presents a substantial and important question of federal constitutional law: Whether the Government's unfounded assertions of title to private land rendering it unsaleable and valueless constitute a taking of property without just compensation? Below a divided panel of the Federal Circuit held that the Government's claim of title could not constitute a taking even if it rendered the property unmarketable and valueless. In doing so, it created an exception to the Supreme Court's decision that Government action that makes land valueless constitute a taking. See *Lucas v. S.C. Coastal Council*, 505 U.S. 1003 (1992). And, contradicts the Supreme Court's rule that the taking of one stick in the bundle of property rights can be a taking where that stick is essential to the owner's enjoyment of the property. See *Hodel v. Irving*, 481 U.S. 704, 716-17 (1987). Furthermore, it created intra-circuit confusion in a well settled area of law since it directly contradicts the Federal Circuit's precedent in which it found a taking where the United States prohibited the exercising of mineral rights by letter explaining that it thought that the mineral rights belonged to the United States. *Yuba Nat. Res., Inc. v. United States*, 821 F.2d 638 (Fed. Cir. 1987).

As the panel dissent pointed out, the right to sell property is such an essential stick in the bundle of rights that deprivation of that right alone constitutes a taking:

The "right to convey hearkens back to the Statute of Quia Emptores in the year 1290, and the right to alienate one's property has been accepted as an incident of an estate in fee simple ever since." *Chianese v. Culley*, 397 F.Supp. 1344, 1345 (S.D. Fla. 1975). "[F]or what is the land but the profits thereof[?]" *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1017, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992) (quoting 1 E. Coke, Institutes, ch. 1, § 1 (1st Am. ed. 1812)).⁴

⁴ *Katzin*, 908 F.3d at 1367 (Newman, J., dissenting).

Although the Supreme Court in *Kirby Forest Industries*⁵ did not reach the issue of whether deprivation of the right to sell is a taking, as the panel dissent states:

The Court expressly left open the question of “whether abrogation of an owner’s right to sell real property, combined with a sufficiently substantial diminution of its utility to the owner, would give rise to a taking,” *id.* at 15 n.25, 104 S. Ct. 2187, while recognizing that where there is “an interference with an owner’s legal right to dispose of his land” there can be a taking. *Id.* at 15, 104 S. Ct. 2187.⁶

REASONS FOR GRANTING AN EXTENSION OF TIME

Petitioners’ time to file a petition for writ of certiorari should be extended for sixty (60) days because the parties are currently engaged in good faith settlement negotiations which may render the filing of the petition for a writ of certiorari moot. The extension would not work any meaningful prejudice on any party because, if this Court grants the petition, this Court would likely hear oral argument in fall or winter of 2019 and issue its opinion in the October 2019 term regardless of whether an extension is granted.

CONCLUSION

For the reasons stated above, the petitioners respectfully request that the time to file a petition for a writ of certiorari in this matter be extended for sixty (60) days, from June 24, 2019, up to and including, August 23, 2019.

Respectfully submitted,

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⁵ *Kirby Forest Indus., Inc. v. United States*, 467 U.S. 1 (1984).

⁶ *Katzin*, 908 F.3d at 1368 (Newman, J., dissenting).

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